207.

SUPREME COURT OF THE UNITED STATES.

No. 191.

THE UNITED STATES, APPELLANTS,

v.

FRANCISCO PERES PACHECO.

APPEAL FROM THE DISTRICT COURT U. S., FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Proceedings before Commissioners,	1	2
Petition of claimant,	3	3
Deposition of Macsimo de Taboas,	5	4
" Jose Maria Sanchez,	7	5
Title,	10	6
"C," Translation of Title,	13	8
Opinion of Commissioners,	16	10
Decree of Commissioners,	16	10
Certificate of Secretary,	18	11
Certificate of Clerk Dist. Court,	19	11
Proceedings in Dist. Court,	20	11
Notice of Appeal,	23	13
Petition for Review,	23	13
Answer to Petition,	28	18
Deposition of Abel Stearns,	32	22
" Anastacio Garrillo,	33	23
Order to take testimony,	35	25
Stipulation,	36	25
Decree,	36	26
Notice of Appeal,	38	27
Clerk's certificate,	39	27

Transcript of the proceedings in Case No. 64, Francisco Peres Pacheco, Claimant, *v.* The United States, Defendant, for the place named "San Felipe."

Office of the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California.

Be it remembered, that on this twenty-fourth day of February, Anno Domini one thousand eight hundred and fifty-two, before the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board, in the City of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Francisco Peres Pacheco, for the place named "Ausaymas," was presented and ordered to be filed and docketed, with No. 64, and is as follows, to wit:

(Vide pages 3, 4, & 5 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

Monday, May 3d, 1852.

In case No. 64, Francisco Peres Pacheco, the deposition of Macsimo de Taboaz, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this Transcript, 5, 6, 7.)

In the same case the deposition of Jose Maria Sanchez, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed, and is in the words and figures as follows, to wit:

(Vide pages of this Transcript, 7, 8, 9.)

Wednesday, June 1st, 1853.

The following case was set in its order for hearing:—No. 64, Francisco Peres Pacheco.

Thursday, December 23d, 1852.

Case No. 64, Francisco Peres Pacheco, for the place named "San Felipe," was called, argued, and submitted, with the evidence taken under advisement by the Board.

Wednesday, January 5th, 1853.

In case No. 64, Francisco Peres Pacheco, for the place named "San Felipe," Commissioner Hiland Hall delivered the opinion of this Board, and the decree of final confirmation.

Ordered, that the opinion and decree of final confirmation of this Board, delivered this day in this case, be recorded on the Journal.

Which opinion and decree are in the words and figures as follows, to wit:

(Vide pages of this Transcript, 16, 17.)

Petition.

To the Honorable the Commissioners for the Settling of Private Land Claims in California.

The petition of Francisco Perez Pacheco respectfully showeth, that being a Mexican by birth, and possessed of a large amount of cattle and other stock, and finding that the tract of land granted to him by Governor Figuroa, on the 26th of November, 1833, under the name of "Ausaymas," was not sufficiently extensive to hold and give sufficient pasturage to his cattle, he made and presented his petition on the 1st of February, 1836, to Jose Gutienez (Gutierres), then governor, soliciting for himself the grant of the tract lying north of the lands formerly granted to him under the name of "Ausaymas," in the present Counties of Santa Clara and Tuolumne, and comprising about two leagues in length and two in width.

That said Governor Gutierres, on the 5th of February, 1836, referred the said petition to the respective authorities for a report thereon.

That said authorities reporting favorably thereon, said Gutierres, by virtue of the authority vested in him as constitutional Governor of California, by a decree dated the 6th of February, 1836, declared the said Francisco Perez Pacheco to be the owner of the tract of land petitioned for, and directed the proper documents, constituting title, to be executed to said Pacheco.

That said title was issued on the 1st of April, 1836, in accordance with all the formalities of the law, and delivered to your petitioner.

That said petition, reference, decree, and a map of the land, together with a duly certified copy of the grant, are now on file in the office of the Surveyor-General of the United States of America for the State of California, among the archives of California, and that duly certified copies of said petition, reference, and decree, together with the map and translations, are and form the latter part of the Espediente filed in the office of your honorable Commission, with the papers concerning the "Ausaymas," and are prayed to be made a part to this petition. That the original grant is in the possession of your petitioner, and ready to be offered in evidence whenever required. But that a duly certified copy of the recorded copy of said grant on record as aforesaid is herewith submitted and prayed to be made a part to this petition.

That said land is situated in the present Counties of Santa

Clara and Tuolumne, and is bounded according to the term of the grant as follows:

1. On the north by the foot of the mountains which go to San Luis Gonsaga.

2. On the east by the continuation of the line which forms the eastern boundary line of the "Ausaymas."

3. On the south by the boundary line which forms the northern boundary of the Ausaymas.

4. On the west by a line running parallel to the line described in Number two (2), comprising altogether about six square leagues, more or less, or so as to use the terms of the grant, eight square leagues including the Ausaymas, which said Pacheco already possesses in full ownership.

And your petitioner further states, that ever since said grant has been made to him, he has been in possession of said land without the interference of any person whomsoever, and has always exercised full, acknowledged, and undisputed ownership over the same.

He, therefore, claims to be the owner of said tract of land, and prays that your honorable body will confirm his claim and title thereto.

CLARK, TAYLOR, & BOCKH,
Attorneys for Petitioner.

Filed in office, February 24th, 1852.

GEO. FISHER,
Secretary.

Deposition of Macsimo Taboas.

Office of the Board of Commissioners of California Land Claims,
San Francisco, May 3d, 1853.

On this day before me, Hiland Hall, one of the Commissioners for ascertaining and settling private land claims in the State of California, came Macsimo Taboas, a witness produced in behalf of the claimant, in three petitions of Francisco Peres Pacheco, being numbered 63, 64, and 65 on the docket of the Commissioners, and was duly sworn.

His evidence being given in the Spanish language was interpreted by the Secretary.

The law agent was notified, and attended.

In answer to questions propounded by the counsel for the petitioner, the witness testifies as follows:

My name is Macsimo Taboas, my age is thirty-three, and my residence is in Monterey, where I have lived for about three years. I have known Francisco Perez Pacheco for three years. I am acquainted with the Ranchos of Ausaymas, San Felipe, and Bolsa de San Felipe, and have known them during the same period.

They are one and the same thing.

They have been occupied by Pacheco during the same time with cattle, horses, and improvements, to the extent of from eight to ten

leagues. The stock of cattle and horses has averaged from eight to ten thousand head.

The improvements consist of a large adobe house, valued from fifteen to twenty thousand dollars, pens for cattle and horses, large enough to contain two hundred head, and also sheep and hog-pens, and ten or twelve cabins for Indian laborers, and land under cultivation, sufficient to support the people employed on the rancho.

In answer to questions put by the law agent, the witness says that from what he has heard others say, he thinks the rancho is from eight to ten leagues from the sea-coast at the nearest part.

(Signed) MACSIMO DE TABOAS.

Sworn and subscribed before me.

(Signed) HILAND HALL,
Com'r.

I certify the above to be a true and exact copy of the original, on file in this office, in case No. 63.

GEORGE FISHER,
Secretary.

Filed in office, May 3, 1852.

GEORGE FISHER,
Secretary.

Deposition of Jose Maria Sanchez.

Office of the Board of Commissioners of California Land Claims.
San Francisco, May 3d, 1852.

On this day, before me, Hiland Hall, one of the Commissioners for ascertaining and settling private land claims in the State of California, came Jose Maria Sanchez, a witness produced in behalf of the claimant in three petitions of Francisco Perez Pacheco, being numbers 63, 64, and 65, on the docket of the Commissioners, and was duly sworn.

His evidence being given in the Spanish language, was interpreted by the Secretary.

The Law Agent was notified, and attended.

In answer to questions propounded by the counsel for the petitioner, the witness testified as follows:

My name is Jose Maria Sanchez; my age is fifty-two years, and I reside in the town of San Juan Bautista and County of Monterey.

I was born in the City of Mexico, and came to California in 1825, and have lived here ever since.

I have been acquainted with Francisco Perez Pacheco ever since 1825.

He obtained a grant of San Felipe about the year 1833, and has occupied it ever since.

The Rancho de Ausaymas adjoins San Felipe.

Ausaymas has been occupied for the same period.

When he obtained the grant, he built a house on the land and lived in it himself, and I lived with him.

He placed cattle on it the first year, to the number of about two hundred, and the next year he had twenty-five hundred, or more.

He also had horses there, to the number of two hundred the first year.

He has continued to occupy it; the cattle increasing in numbers, but to what extent I cannot say.

He has raised wheat, barley, corn, and vegetables in considerable quantities, supplying servants and tenants to the number of forty or fifty.

He had, at the commencement of his possession, some eight cabins and some corrals, besides the main house, and enclosures for cultivation; and additional improvements have since been made.

I know the rancho Bolsa de San Felipe.

It borders upon San Felipe, and is a part of it; and it also borders on my land. It is called Bolsa, in consequence of its being nearly enclosed by a swamp, a willow grove, and a ravine,—which ravine is called Saujon de Tequisquita.

The Bolsa belonged to the San Juan Bautista Mission until it was granted to Pacheco.

At that time the family of the major-domo of the Mission and some Indians belonging to the Mission were living there, and Pacheco permitted them to continue there, he lending them the land.

The house that was first built remains on the land yet. Ausaymas and San Felipe are both one, and the improvements are on both.

In answer to questions by the Law Agent, the witness says he does not know the distance of the land from the sea-coast, and cannot tell.

(Signed) JOSE MARIA SANCHEZ.

Subscribed and sworn before me.

HILAND HALL,
Com'r.

I certify the above to be a true and exact copy of the original on file in this office in Case No. 63.

GEO. FISHER,
Secretary.

Filed in office, May 3d, 1852.

GEO. FISHER,
Secretary.

Concession or Title.

Sello primero. Seis pesos.

Habilitado provicionalmente por la Administracion de la Aduana

Maritima de Monterrey de la Alta California para los anos de mil ocho cientos treinta y cuatro y ocho cientos treinta y cinco.

FIGUEROA,
A. RAMIREZ.

Revalidado para el bienio de 1836 y 1837.

GUTIERREZ.
A. RAMIREZ.

Nicolas Gutierrez, Teniente Coronel de Caballeria permanente, Comandante-General, Inspector y Gefe Superior Politico interno del Territorio de la Alta California.

[GOVIERNO POLITICO DE LA ALTA CALIFORNIA.]

Por cuanto el Co. Francisca Perez de Pacheco, Mejicano por nacimiento ha pretendido para su beneficio personal y el de su familia la ampliacion de terreno de estension de tres leguas al sitio que yaposee en propriedad por ser este escaso y no caberle los bienes de su pertenencia en el que obtiene conocido con el nombre de [Dros 20 ps.] Ausaimas, cuya estension es de dos sitios de ganado mayor segun consta por el titulo de el para que se le incluya en el presente, previas las averiguaciones y tramites convenientes, he venido en concederle las tres leguas de ampliacion al Norte que solicita, usando de las facultades que me son conferidas a nombre de la Nacion Mejicana declarandole la propriedad de el por las presentes letras, a reserva de la aprobacion de la Exma. Diputacion en cuanto a la ampliacion y bajolas condiciones siguientes.

1a. Que se sometera a las que estableciere el reglamento que se ha de formar para la distribucion de terrenos baldios y que entre tanto ni el agraciado ni sus herederos podran divider ni enagenar el que se las adjudica, imponer senso, vinculo, fianza, hypoteca ni otro gravamen aun que sea por causa piadosa ni pasarlo, a manos muertas.

2a. Podra sercarlo sin perjudicar las travesias caminos y servidumbres lo poseera libre y esclusivamente destinandolo al uso y cultivo que mas le acomode, pero dentro de un ano a lo mas fabricara casa y estara habitada.

3a. Solicitara al Juez respectivo que le de posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mojoneras algunos arboles frutales o silvestres de alguna utilidad.

4a. El terreno de que se hace donacion es de ocho sitios de ganado mayor inclusos los "Ausaimas," que ya posee en plena propriedad, cuyos linderos son al Norte basta el pie de la cuesta que posa para Sn. Luis Gonzaga, por el Este lalinea recta del terreno que posee, por el Sur este mismo terreno y por el Oeste la paralela de la segunda, segun esplica el diseno que corre en el espediente. El Juez que diere la posesion lo hara medir conforme a ordenanza quedando el Sobrante que resulte a la Nacion para los usos convenientes.

5a. Si contraviniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendose por firme y valedero se tome razon de el en el libro que corresponde y se entrigue al interesado para su resguardo y demas fines.

Dado en Monterrey a primero de Abril de mil ocho cientos treinto y seis.

NICOLAS GUTIERREZ.
FCO. DEL CASTILLO NEGRETE,
Srio.

Queda tomada razon a fojas 101 y Senalado con el No. 98 del libro que corresponde de asientos de titulos que
[12 Dros. 10 ps.] en el archivo de la Secretaria de mi cargo.
CASTILLO.

Monterrey, Abril 1o. de 1836.

C. Translation of Title.

Seal of the first class, six dollars, authorized provisionally by the Collector of the Maritime Custom-House in Monterey, Upper California, for the years eighteen hundred and thirty-four and eighteen hundred and thirty-five.

(Signed) FIGUEROA.
(Signed) A. RAMIREZ.

[Government Seal.] Made valid for the years 1836 and 1837.
(Signed) GUTIERREZ.
(Signed) A. RAMIREZ.

Nicholas Gutierrez, Lieutenant-Colonel of Permanent Cavalry, Commandant General, Inspector, and Superior Political Chief, *ad interim*, of the Territory of Upper California.

Whereas, citizen Francisco Peres Pacheco, a Mexican by birth, has solicited, for his personal benefit and that of his family, an extent of land three leagues in addition to the farm whereof he is at present the owner, on account of its being too small and not holding the cattle belonging to him.

The Rancho he now possesses is known by the name of *Ausaymas*, and contains two square leagues (dos sitios de ganado
[Fees, $2.] mayor) as appears by the title thereof; and after going through the necessary steps and proceedings, I have, by virtue of the powers conferred upon me, granted unto him by these present letters, in the name of the Mexican nation, the three additional leagues which he asks for towards the N.; declaring unto him the ownership thereof, subject to the approval of the Most Excellent Deputation, as far as regards the augmentation, and under the following conditions.

1st. That he shall abide by these which may be established by the regulations to be formed for the distribution of vacant lands, and that in the meantime, neither the grantee nor his heirs shall divide or alienate the land adjudicated to them, impose land rent (censo), entail (vinculo), bond (fianza), mortgage, or any other burden, although it may be for pious purposes, nor transfer it in mortmain.

2d. He may fence it without prejudice to the crossings, roads, and servitudes; he shall possess it freely and exclusively, putting it to the use and cultivation which may best suit him, but within one year he shall build a house, and it must be inhabited.

3d. He shall request the respective magistrate to give him juridical possession in virtue of this patent, and said magistrate will designate the boundaries, on the limits whereof the grantee shall, besides placing the landmarks, plant some fruit trees, or wild ones of some utility.

4th. The land whereof donation is made consists of eight square leagues (ocho sitios de ganado mayor) including the Ausaymas, which he already possesses in full ownership, the boundaries of which are on the N. as far as the foot of the mountain which goes to the Luis Gonzaga; on the E. the straight line of the land which he possesses; on the south this same land; and on the west the parallel of the second, as appears by the plot which accompanies the Espediente. The magistrate who gives possession shall have it measured according to law; leaving the surplus which may result to the nation, for the necessary uses.

5th. If he transgress these conditions, he shall lose his right to the land, and it may be denounced by another.

I consequently command, that these presents, serving him for a title, be held as firm and valid, and be recorded in the corresponding book, delivering the original to the party interested for his security and further ends.

Given in Monterey on the first of April, eighteen hundred and thirty-six.

(Signed) NICOLAS GUTIERREZ.
(Signed) FRANCISCO DEL CASTILLO NEGRETE,
Secretary.

Recorded in the corresponding book of entries of titles kept in the archives of the Secretary's office under my charge, at folio 101, mark with number 98.

Fees, $10.

(Signed) CASTILLO.
Monterey, April 1st, 1836.

I, the undersigned, do hereby certify the foregoing to be a true and faithful translation of its original.

Office of State Translator, Monterey, 5th December, 1851.

W. E. P. HARTNELL,
State Translator, T. C.

Filed in office, Feb. 24th, 1852.

GEO. FISHER,
Secretary.

Opinion.

No. 64. Francisco Peres Pacheco, Claimant.

Francisco Peres Pacheco asks for the confirmation to him of a tract of land, in addition to another tract formally granted him which was called "Ausaymas," the whole containing eight square leagues, of which additional tract, in augmentation of the former, he produces a grant to himself from Governor Gutierres, dated April 1st, 1836.

There is no evidence that the grant was confirmed by the Territorial Deputation, or that judicial possession of the additional tract was given to the claimant; but it is proved that the claimant has been in the quiet occupation of the land, from the date of the grant to the present time.

We have heretofore uniformly held, that the want of evidence of the approval of a grant by the Territorial Deputation, and of the giving of judicial possession, did not form valid objections to the confirmation of a claim; and we hold the same in this case, for reasons heretofore repeatedly given.

No other objections being made or seen to this claim, we enter a decree of final confirmation, as follows, Com'r Thornton concurring in the result.

Decree of Confirmation.

This Board, on full consideration, having come to the conclusion that the claim is valid, now proceeds to make, and does hereby make the following decree or report of final confirmation, viz.: It is decreed that the said claim be confirmed to the extent and quantity granted, being eight square leagues, including the land which had been previously granted, which previous grant, to an extent of not exceeding two square leagues, has been this day confirmed to the same claimant, in case No. 63 on the Docket of this Board.

Provided, that the said quantity of eight square leagues (including the same tract before granted) now confirmed to the claimant, be contained within the boundaries called for in said grant and map to which the grant refers; and if there be less than that quantity within said bounds, then we confirm to the claimant that less quantity.

Witness our hand this 5th of January, 1853.

HILAND HALL,
HARRY J. THORNTON,
Commissioners.

Filed in office, January 5th, 1853.

GEO. FISHER,
Secretary.

Office of the Board of Commissioners to ascertain and settle the private land claims in the State of California.

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing seventeen pages, numbered from 1 to 17, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said Board, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in Case No. 64 on the docket of the said Board, wherein Francisco Peres Pacheco, the claimant against the United States for the place known by the name of "Ausaymas."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office), at San Fran-
[G. F.] cisco, California, this thirteenth day of March, A. D. 1854, and of the Independence of the United States of America the seventy-eighth.

GEO. FISHER,
Secretary.

United States District Court, Southern District of California.
Clerk's Office, Los Angeles.

I, Charles E. Carr, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing 18 pages, numbered from 1 to 18, both inclusive, contain a full, true, and correct copy of transcript No. 64, filed in this office, wherein Francisco Perez Pacheco is appellee and The United States are appellants, for "San Felipe."

In testimony whereof I have hereunto set my hand and affixed the
[SEAL.] seal of said Court, at Los Angeles, California, this 25th day of December, A. D. 1855, and of the Independence of the United States of America the eightieth.

C. E. CARR,
Clerk.

United States District Court, Southern District of California.
Clerk's Office, Los Angeles.

FRANCISCO PEREZ PACHECO, Appellee,
ads.
THE UNITED STATES, Appellant.
} Docket No. 78. Transcript No. 64.

Be it remembered, that on the 19th day of September, A. D. 1854, in the District Court of the United States for the Southern District of California, the following proceedings were had, to wit:

A duly certified transcript of the proceedings and decision, and the papers and evidence upon which the said decision was founded, of the Commissioners to ascertain and settle the private land claims

in the State of California, when sitting as a Board, in the case wherein Francisco Perez Pacheco is the claimant against the United States for the place named "San Felipe," was received and filed, and docketed with No. 78, and is as follows, to wit:

(Vide pages 1 to 18.)

Los Angeles, Sept. 23d, 1854.

In case No. 78, Francisco Perez Pacheco for San Felipe, notice of appeal from the Attorney-General of the United States was filed.

(Vide page 5.)

Los Angeles, Dec. 29th, 1854.

In same case, petition of the United States, for review, was filed.

(Vide page 5.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

Los Angeles, April 11th, 1855.

The answer of Francisco P. Pacheco was filed.

(Vide page 11.)

Los Angeles, June 19th, 1855.

The deposition of Jose Rafael Gonzales was taken and filed in this case.

(Vide page 12.)

Los Angeles, Oct. 8th, 1855.

The depositions of Abel Stearns and Anastacio Carrillo were taken and filed.

(Vide page 15.)

Los Angeles, Oct. 8th, 1855.

The followimg document was submitted and made a part of the evidence, and filed.

(Vide page 17.)

Los Angeles, Oct. 9th, 1855.

Leave to take further testimony filed.

(Vide page 18.)

Los Angeles, Oct. 9th, 1855.

Stipulation filed.

(Vide page 19.)

Los Angeles, Oct. 11, 1855.

In the same case the Court delivered its opinion confirming the claim, and the following decree was entered.

(Vide page 19.)

Los Angeles, Oct. 19, 1855.

On motion of the United States Attorney, the following order was made and filed.

(Vide page 21.)

Appeal Notice.

Attorney-General's Office, 10th August, 1854.

FRANCISCO PEREZ PACHECO, Claimant,
v.
THE UNITED STATES. } No. 64.

You will please take notice that an appeal in the above case (a transcript of the proceedings in which was received at this office on the 27th of April, 1854) from the decision of the Commissioners to ascertain and settle the private land claims in the State of California, to the District Court of the United States for the Southern District of California, will be prosecuted by the United States.

C. CUSHING,
Attorney-General.

Filed Sept. 23d, 1854.

A. S. TAYLOR,
Dy. Clerk.

Petition for Review.

In the District Court of the United States, for the Southern District of California. Los Angeles County.

FRANCISCO PEREZ PACHECO
ads.
THE UNITED STATES. } No. 64.

To the Honorable Isaac S. K. Ogier, Judge of the District Court of the United States for the Southern District of California.

The petition of Pacificus Ord (of Monterey County), Attorney of the United States for the Southern District of California, who petitions in this behalf for the United States, and being present here in Court, in his proper person, in the name and behalf of the United States, represents as follows:

That heretofore, to wit, on or about the 24th day of February, A. D. 1852, Francisco Perez Pacheco presented a petition to the Commissioners to Ascertain and Settle the Private Land Claims in the State of California, claiming the tract of land called San Felipe, containing

about six or eight square leagues in Santa Clara and Toulumne Counties, in the words and figures following, to wit: "The petition of Francisco Perez Pacheco, respectfully showeth, that being a Mexican by birth, and possessed of a large amount of cattle and other stock, and finding that the tract of land granted to him by Governor Figueroa on the 26th of November, 1833, under the name of Ausaymas, was not sufficiently extensive to hold and to give sufficient pasturage to his cattle, he made and presented his petition on the 1st of February, 1836, to Jose Gutierrez, then Governor, soliciting for himself the grant of the tract lying north of the lands formerly granted to him under the name of Ausaymas, in the present counties of Santa Clara and Toulumne, and comprising about two leagues in length and two in width. That said Governor Gutierrez, on the 5th of February, 1836, referred the said petition to the respective authorities for a report thereon. That said authorities reporting favorably thereon, said Gutierrez, by virtue of the authority vested in him as Constitutional Governor of California, by a decree dated the 6th of February, 1836, declared the said Francisco Perez Pacheco to be the owner of the tract of land petitioned for, and directed the proper documents constituting title to be executed to said Pacheco. That said title was issued on the 1st of April, 1836, in accordance with all the formalities of the law, and delivered to your petitioner. That said petition, reference, decree, and a map of the land, together with a duly certified copy of the grant, are now on file in the office of the Surveyor-General of the United States of America for the State of California, among the Archives of California, and that duly certified copies of said petition, reference, and decree, together with the map and translations, are and form the latter part of the expediente filed in the office of your Honorable Commission with the papers concerning the 'Ausaymas,' and are prayed to be made a part to this petition. That the original grant is in the possession of your petitioner, and ready to be offered in evidence whenever required. But that a duly certified copy of the recorded copy of said grant on record as aforesaid is herewith submitted and prayed to be made a part to this petition. That said land is situated in the present counties of Santa Clara and Toulumne, and is bounded according to the terms of the grant as follows: 1. On the north by the foot of the mountains which go to San Luis Gonzaga. 2. On the east by the continuation of the line which forms the eastern boundary line of the 'Ausaymas.' 3. On the south by the boundary line which forms the northern boundary of the Ausaymas. 4. On the west by a line running parallel to the line described in No. two (2), comprising altogether about six square leagues, more or less, or, so as to use the terms of the grant, eight square leagues, including the Ausaymas, which said Pacheco already possesses in full ownership. And your petitioner further states that ever since said grant has been made to him, he has been in possession of said land without the interference of any person whomsoever, and has always exercised

full, acknowledged, and undisputed ownership over the same. He therefore claims to be the owner of said tract of land, and prays that your honorable body will confirm his claim and title thereto."

Your petitioner further represents, that thereafter, to wit, on the 5th day of January, A. D. 1853, the said Commissioners confirmed by final decree the said claim of the said Francisco Perez Pacheco, in the words and figures following, to wit: "This Board, on full consideration, having come to the conclusion that the claim is valid, now proceeds to make and does hereby make the following decree or report of final confirmation, viz.: It is decreed that the said claim be confirmed to the extent and quantity granted, being eight square leagues, including the land which had been previously granted, which previous grant to an extent of not exceeding two square leagues has been this day confirmed to the same claimants, in case No. 63, on the docket of this Board. Provided, that the said quantity of eight square leagues (including the same tract before granted) now confirmed to the claimant, be contained within the boundaries called for in said grant and map, to which the grant refers, and if there be less than that quantity within said bounds, then we confirm to the claimant that less quantity. Witness our hands this 5th of January, 1853.

"HILAND HALL,
"HARRY J. THORNTON,
"Commissioners."

That thereafter, to wit, on the 19th day of September, A. D. 1854, a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded in said cause, was filed in the office of the Clerk of the District Court of the United States for the Southern District of California, and marked No. 64, reference to which it is prayed may be had and made a part of this petition.

That on the 27th day of April, A. D. 1854, the Honorable Caleb Cushing, Attorney-General of the United States, received a duly certified duplicate of said transcript of said final decree and proceedings of said Commissioners in said cause (No. 64), and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 23d day of September, A. D. 1854, the said Attorney-General of the United States filed or caused to be filed on behalf of the United States a notice with the said Clerk of said District Court for the Southern District of California, that the appeal in said cause of Francisco Perez Pacheco *v.* The United States, from the decision of the said Commissioners to ascertain and settle the private Land Claims in the State of California, in the District Court of the United States for the Southern District of California, would be prosecuted by the United States.

Your petitioner further represents, that the said land claimed as aforesaid is within the jurisdiction of this Honorable Court.

And your petitioner further represents and insists, that the said decree of said Commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence apparent in said certified transcript of said cause now on appeal from said Commissioners to this Honorable Court.

And your petitioner further represents, that the said claim is invalid, and the said decree erroneous, on the following grounds:

1. That the said Francisco Perez Pacheco shows no valid title to the said land claimed by him as aforesaid, and it is denied that he has any.

2. That the said alleged grant of Governor Gutierrez was made in violation of the 4th article of the Colonization law of Mexico, of the 18th of August, A. D. 1824, in this, that the land granted as alleged by claimant, was and is within ten leagues of the sea-coast. And there is no evidence by claimant that the Supreme General Executive power of Mexico previously approved of the colonization of the lands of California within ten leagues of the sea-coast. And it is denied that such previous consent of said Supreme General Executive power of Mexico in such case was ever had.

3. That at the date of the said alleged grant, the said land claimed as aforesaid, was occupied by, and in the possession of, the Missions of California, and particularly by the Mission of San Juan Bautista; and could not therefore be colonized.

4. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the law of Mexico of the 18th of August, A. D. 1824, and the regulations for the colonization of the Territories of Mexico, of the 21st of November, A. D. 1828.

5. That the land alleged to have been granted by Governor Gutierrez, of the date of the 1st of April, A. D. 1836, is not sufficiently described in said grant so that it can be identified; that there is no original map shown of the said land; that the said alleged grant is vague and indefinite, and is void for uncertainty.

6. That there is no evidence that the names of Nicolas Gutierrez and Franco. del Castillo Negrete, appearing upon the said alleged grant of said date, are their genuine signatures; and it is denied that they are genuine; and the genuineness of the said alleged grant of said Governor Nicolas Gutierrez of said date is also denied.

7. That there is no evidence that the conditions of the said alleged grant were ever performed by said Francisco Perez Pacheco; and it is denied that they were ever performed by him.

8. That there is no evidence that the said alleged grant of said land, by said Governor Gutierrez, was ever approved by the Territorial Deputation or Departmental Assembly of California; and it is denied that the said grant for said land was ever approved by said Deputation or Assembly.

9. That there is no evidence that the said Francisco Perez Pacheco built a house on the said land claimed as aforesaid, within a year

from the date of said grant, and that it was occupied by him, and that he cultivated the said land; and it is denied that he ever built a house on said land, within a year from the date of the said grant, and that it was occupied, and that he cultivated the said land as required by law and the conditions of said alleged grant.

10. That there is no evidence that the said claimant ever solicited of the respective judge, or received the juridical possession of the said land, and that it was measured according to law, as required by the conditions of the said alleged grant; and it is denied that said claimant ever asked for or received juridical possession of the said land, and that it was measured according to law.

11. That the said final decree of said Commissioners, of said claim for eight square leagues, is erroneous, and the claim invalid in this. That the claim of Francisco Perez Pacheco for Ausaymas (No. 63), of the extent of two square leagues, alleged to have been granted by Governor Figueroa, on the 26th of November, A. D. 1833, and confirmed by said Commissioners by final decree, dated the 5th of Jan. A. D. 1853; and the three leagues, in addition to the said grant of "Ausaymas," now claimed, and alleged to have been granted by said Governor Gutierrez, on the 1st of April, 1836, when united, would make in all but five square leagues of land.

And no proof having been made by said claimant of the allegations of his said petition, or in support of his said claim, filed as aforesaid, no decree ought to have been made or grounded thereon, but the said petition ought to have been dismissed, and said claim rejected by said Commissioners upon the grounds aforesaid.

Wherefore, the said Pacificus Ord, Attorney of the United States for the Southern District of California, for and in behalf of the United States, by reason of the premises and the laws and statutes in such case made and provided, prays that the said Francisco Perez Pacheco, or his attorney, may be served with a copy of this petition; and that this Honorable Court will review the said decision or final decree of confirmation of said Commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Francisco Perez Pacheco for said land claimed and confirmed as aforesaid, and that the same may be decreed invalid; and all such other orders, judgments, or decrees as may be just, with costs and general relief.

P. ORD,
Attorney of the United States for the Southern District of California.

Filed Dec. 29th, 1854.

C. E. CARR,
Clerk.

Answer.

In the United States District Court, for the Southern District of California.

THE UNITED STATES, Appellant,
v.
FRANCISCO P. PACHECO, Appellee.

Claim for "San Felipe."

Docket No. 78.—Land Commission, No. 64.

And now comes the above-named appellee, Francisco P. Pacheco, by T. R. Scott, his attorney, and for answer to the petition for review, filed in this case by the appellant, says:

That on the 1st day of April, A. D. 1836, Nicolas Gutierrez, then constitutional and acting Governor of Upper California, ad interim, and duly authorized by law to make such grants, did, by his deed of grant of that date, duly executed according to law, grant and convey to this appellee, a tract of land known as "San Felipe," additional to and adjoining the lands of "Ausaymas," previously granted to and occupied by this appellee, and containing six square leagues, a little more or less.

And that afterwards, to wit, on the 24th day of February, A. D. 1852, this appellee filed, before the United States Board of Land Commissioners to ascertain and settle the private land claims in California, his petition, setting forth his title to said lands of San Felipe, and praying for a confirmation thereof to him by the said Board, together with certain documentary evidence in support of said petition.

And that afterwards, to wit, on the 3d day of May, A. D. 1852, he also filed certain depositions of witnesses in support of his claim to said lands of "San Felipe;" all of which said petition, documentary evidence, and depositions of witnesses, together with the subsequent proceedings of said Commissioners in the matter, are contained in the transcript of case No. 64 in the docket of said Commission, now on file in the office of the Clerk of this Court, to all of which this appellee hereby refers, and makes a part of this his answer.

And this appellee, on the 24th day of February, A. D. 1852, also filed before said Commissioners certain other documentary evidence, the same being his petition to the aforesaid Governor Gutierrez for the lands in this case, and the reference and decree of said Governor in the matter; all of which documentary evidence is contained in the transcript of case No. 63 in the docket of said Commissioners, now on file in the office of the Clerk of this Court, to which this appellee hereby refers, and makes a part of this his answer.

And this appellee further states, that on the 5th day of January, A. D. 1853, the said Commissioners, after hearing the petition and

proofs of this appellee, by their decree of that date, confirmed said lands to this appellee.

Whereby this appellee avers that he has become seized in fee simple of said lands of San Felipe, as he avers that he has from the date of the above-mentioned grant to the present time, done, performed, and fulfilled all things and conditions necessary by law for him to do, perform, and fulfil to perfect his title to said lands, particularly by an Act of the Congress of the United States, entitled "An Act to ascertain and settle the private land claims in the State of California," approved March 3d, 1851.

And this appellee further states that the said lands of San Felipe are situate in the present counties of Santa Clara and Tuolumne, and within the jurisdiction of this Honorable Court, and for further answer to the petition for review, filed in this case by the appellant, this appellee denies all and singular each and every allegation therein contained, except what is admitted in this, his answer, and he denies that there is anything in said petition contained, either in law or in fact, to esstop or prevent this Honorable Court from affirming the decree of said Commissioners, and confirming to this appellee his title to the lands in this case.

Therefore this appellee prays the judgment of this Honorable Court, that the decree of said Commissioners may be affirmed, and that his title to the said lands of San Felipe may be confirmed, and that he may be dismissed hence with costs, and may have such other and further relief as shall be agreeable to equity and good conscience and the nature of his case shall require.

J. R. SCOTT,
Attorney for Appellee.

Filed April 11th, 1855.

C. E. CARR,
Clerk.

Deposition of Jose Rafael Gonzales.

United States District Court, Southern District of California.

THE UNITED STATES, Appellant,
v.
FRANCISCO P. PACHECO, Appellee. } No. 78. "San Felipe."

Deposition of Jose Rafael Gonzales, a witness on the part of appellee, taken by consent of parties before Charles E. Carr, United States Commissioner, appointed to take testimony in this case, at Monterey, June 19th, 1855. Present: P. Ord, U. S. attorney for appellant; J. R. Scott, attorney for appellee.

J. L. Ord sworn as Interpreter.

Jose Rafael Gonzales, being duly sworn, deposes and says:

Question 1st. What is your name, age, place of residence, and present occupation?

Answer.

In the United States District Court, for the Southern District of California.

THE UNITED STATES, Appellant,
v.
FRANCISCO P. PACHECO, Appellee.

Claim for "San Felipe."

Docket No. 78.—Land Commission, No. 64.

And now comes the above-named appellee, Francisco P. Pacheco, by T. R. Scott, his attorney, and for answer to the petition for review, filed in this case by the appellant, says:

That on the 1st day of April, A. D. 1836, Nicolas Gutierrez, then constitutional and acting Governor of Upper California, ad interim, and duly authorized by law to make such grants, did, by his deed of grant of that date, duly executed according to law, grant and convey to this appellee, a tract of land known as "San Felipe," additional to and adjoining the lands of "Ausaymas," previously granted to and occupied by this appellee, and containing six square leagues, a little more or less.

And that afterwards, to wit, on the 24th day of February, A. D. 1852, this appellee filed, before the United States Board of Land Commissioners to ascertain and settle the private land claims in California, his petition, setting forth his title to said lands of San Felipe, and praying for a confirmation thereof to him by the said Board, together with certain documentary evidence in support of said petition.

And that afterwards, to wit, on the 3d day of May, A. D. 1852, he also filed certain depositions of witnesses in support of his claim to said lands of "San Felipe;" all of which said petition, documentary evidence, and depositions of witnesses, together with the subsequent proceedings of said Commissioners in the matter, are contained in the transcript of case No. 64 in the docket of said Commission, now on file in the office of the Clerk of this Court, to all of which this appellee hereby refers, and makes a part of this his answer.

And this appellee, on the 24th day of February, A. D. 1852, also filed before said Commissioners certain other documentary evidence, the same being his petition to the aforesaid Governor Gutierrez for the lands in this case, and the reference and decree of said Governor in the matter; all of which documentary evidence is contained in the transcript of case No. 63 in the docket of said Commissioners, now on file in the office of the Clerk of this Court, to which this appellee hereby refers, and makes a part of this his answer.

And this appellee further states, that on the 5th day of January, A. D. 1853, the said Commissioners, after hearing the petition and

proofs of this appellee, by their decree of that date, confirmed said lands to this appellee.

Whereby this appellee avers that he has become seized in fee simple of said lands of San Felipe, as he avers that he has from the date of the above-mentioned grant to the present time, done, performed, and fulfilled all things and conditions necessary by law for him to do, perform, and fulfil to perfect his title to said lands, particularly by an Act of the Congress of the United States, entitled "An Act to ascertain and settle the private land claims in the State of California," approved March 3d, 1851.

And this appellee further states that the said lands of San Felipe are situate in the present counties of Santa Clara and Tuolumne, and within the jurisdiction of this Honorable Court, and for further answer to the petition for review, filed in this case by the appellant, this appellee denies all and singular each and every allegation therein contained, except what is admitted in this, his answer, and he denies that there is anything in said petition contained, either in law or in fact, to esstop or prevent this Honorable Court from affirming the decree of said Commissioners, and confirming to this appellee his title to the lands in this case.

Therefore this appellee prays the judgment of this Honorable Court, that the decree of said Commissioners may be affirmed, and that his title to the said lands of San Felipe may be confirmed, and that he may be dismissed hence with costs, and may have such other and further relief as shall be agreeable to equity and good conscience and the nature of his case shall require.

J. R. SCOTT,
Attorney for Appellee.

Filed April 11th, 1855.

C. E. CARR,
Clerk.

Deposition of Jose Rafael Gonzales.

United States District Court, Southern District of California.

THE UNITED STATES, Appellant,
v.
FRANCISCO P. PACHECO, Appellee.
No. 78.
"San Felipe."

Deposition of Jose Rafael Gonzales, a witness on the part of appellee, taken by consent of parties before Charles E. Carr, United States Commissioner, appointed to take testimony in this case, at Monterey, June 19th, 1855. Present: P. Ord, U. S. attorney for appellant; J. R. Scott, attorney for appellee.

J. L. Ord sworn as Interpreter.

Jose Rafael Gonzales, being duly sworn, deposes and says:

Question 1st. What is your name, age, place of residence, and present occupation?

Answer. My name is Jose Rafael Gonzales, my age is sixty-seven years, my residence Monterey, my occupation ranchero. I have resided in California (Monterey), since the year 1832.

Question 2d. Do you know Francisco Perez Pacheco?

Answer. I know him well.

Question 3. Were you ever Alcalde here in Monterey? If so, in what year?

Answer. I have been Alcalde in Monterey, I don't exactly remember the year, but think it was in 1833 or 1834, at the time Spence was Alcalde, I was also.

Question 4. Are you acquainted with the Rancho of San Felipe? If so, where is it situated?

Answer. I am well acquainted with it. It is situated the other side of San Juan, about fourteen miles from Monterey in a northeasterly direction.

Question 5. State anything you know concerning judicial possession having been given of said ranch, and by whom and when the same was given, and to whom?

Answer. I, being constitutional Alcalde, I gave judicial possession of said ranch to Francisco Perez Pacheco, about the years 1834 or 1835, when I was Alcalde.

Question 6. Who assisted you in giving the judicial possession?

Answer. I do not recollect.

Question 7. What do you know of the occupation of the aforesaid rancho?

Answer. I know that said rancho was occupied by Francisco Perez Pacheco at the time I gave him the possession. Pacheco had a house on it for himself, and houses for his servants; he had cattle, and horses, and sheep on it, and cultivated large portions of it, and planted all kinds of grain on it. Pacheco has continually occupied said ranch up to the present time.

Question 8. Do you know the Rancho of Bolsas de San Felipe, and "Ausaymas?" If so, state what connection they have to the Rancho of San Felipe, as being all three one and the same ranch. (Objected to by the United States Attorney as to form and subject-matter.)

Answer. I know the Ranchos of Bolsas de San Felipe, and Ausaymas. They are all one and the same with San Felipe. (Objected by U. S. Attorney.)

Question 9. State the manner of occupation of the three ranchos, and state whether or not they have been occupied as one ranch, and how long and by whom? (Objected to by U. S. Attorney.)

Answer. They were always occupied as one ranch by Francisco Perez Pacheco; one part was used as sowing ground, and the others were occupied by his horses and cattle. (Objected to by U. S. Attorney.)

Question 10. State on which parts he had his sowing grounds?

Answer. He had his sowing grounds on the other side of the creek, where he planted corn and beans, and on this side of the creek he planted wheat.

Question 11. Can you state the boundaries of any one of these ranchos separately? (Objected to by U. S. Attorney.)

Answer. When I gave possession, I think I gave from the San-jon del Tequesquite to the middle of the Laguna, from thence to a hill that has some oak trees on it, thence to the Canada de los Osos, and from there to the picacho, and from there to a rancho called San Joaquin, and from thence to a place called Coral, adjoining the ranchos of Santana and Santanita. (Objected to by the U. S. Attorney.)

Cross-examined by U. S. Attorney.

Question. Who was present when you gave judicial possession of said Rancho of San Felipe, to Francisco Perez Pacheco, about the year 1834 or 1835?

Answer. I do not recollect; upon further reflection, I remember, that Don Jose Fiburcio Castro was present as administrator of the Mission of S. Juan; and also Mariano Macayo Castro, a neighbor of Pacheco, Quintin Ortega, a colindante of Pacheco was also present. Jose Maria Sanchez and Hipolito Mejia, Cruz Perez, Cruz Cervantes, Rafael Mota, and one Vargas, neighbors and servants of the rancho, were also present: these are all I can recollect.

Question. Did you or not make for, and deliver to Francisco Perez Pacheco, a testimonial of the judicial possession of the said Rancho of San Felipe?

Answer. I did. I gave him a testimonial of the judicial possession; the original remained in the Tuygado of Monterey, then under the charge of David Spence, 1st Alcalde, and of myself, 2d Alcalde of said place.

Question. Under what title did you give judicial possession to the said Pacheco?

Answer. Under a title from Governor Figueroa; there was no other title but that of Governor Figueroa, that I remember.

Question. Was Governor Figueroa alive at the time you gave judicial possession of said rancho?

Answer. I do not recollect, whether Governor Figueroa was living at that time.

Question. At the time you gave judicial possession of said rancho, had Pacheco a house on the same?

Answer. He had several houses on the place.

Ques. Did Pacheco live there in those houses at the time you gave him judicial possession?

Ans. He did.

Ques. What was the name or names of the said tract of land of San Felipe at the time you gave judicial possession of the same?

Ans. At the time I gave the judicial possession it was called "San Felipe" or "Ausaymas."

Ques. How far is the said tract of land from the sea-coast?

Ans. I think that it is about fourteen leagues.

JOSE RAFAEL GONZALEZ.

Sworn to and subscribed, at Monterey, this 19th day of June, 1855, before me.

C. E. CARR,
U. S. Com'r.

Filed June 19th, 1855.

C. E. CARR,
Clerk.

Deposition of Abel Stearns.

F. P. PACHECO, Appellee,
ads.
THE UNITED STATES, Appellant. } No. 78.

San Felipe.

Abel Stearns, a witness on the part of appellee, was sworn, and testified as follows:

Ques. What is your name, age, and place of residence?

Ans. My name is Abel Stearns, age 57 years, residence Los Angeles.

Ques. How long have you resided in California?

Ans. Twenty-six years.

Ques. State whether you were acquainted with Nicolas Gutierrez and Francisco del Castillo Negrete; if so, state if you have frequently seen them write, and are acquainted with their handwriting?

Ans. I was acquainted with them both. I have frequently seen Gutierrez write; I don't know that I ever saw Negrete write. I have had documents in my possession purporting to be signed by Negrete; but I never saw him write.

Ques. Look upon a document here presented to you, purporting to be a grant of land made by the said Nicolas Gutierrez to Francisco P. Pacheco, for the place called San Felipe, bearing date April 1st, 1836, and state whether the signatures of said Gutierrez and Negrete, as here they appear in said document, are their genuine signatures?

Ans. I pronounce the signature of Nicolas Gutierrez to be genuine. Negrete I never saw write. Gutierrez was Gefe Politico Provisional of California in 1836. I think Negrete was acting as secretary under Gutierrez at that time.

(Said document is hereto annexed, and marked "Exhibit B. C. E. C.")

(Signed) ABEL STEARNS.

Sworn to and subscribed before me, this 8th day of Oct., 1855.
(Signed) C. E. CARR,
Clerk.

Filed Oct. 8th, 1855.
(Signed) C. E. CARR,
Clerk.

Deposition of Anastacio Carrillo.

F. P. PACHECO, Appellee,
ads.
THE UNITED STATES, Appellants. } No. 78.

San Felipe.

Anastacio Carrillo, a witness for appellee, was sworn and testified.
Abel Stearns sworn as interpreter.

Ques. What is your name, age, and place of residence?

Ans. My name is Anastacio Carrillo, my age 67 years, residence Santa Barbara.

Ques. State whether you are acquainted with Francisco del Castillo Negrete; if so, whether you have frequently seen him write, and are acquainted with his signature?

Ans. I knew him. I have often seen him write; I know his signature.

Ques. Look upon a document here presented to you, purporting to be a grant for the Ranch of San Felipe, executed by Nicolas Gutierrez to Francisco Perez Pacheco, bearing date April 1st, 1836, and state whether the signature of said Negrete, where it appears on said document, is his genuine signature?

Ans. I think it is his signature (said document is annexed to the deposition of Abel Stearns, taken this day in this case, and marked "Exhibit B. C. E. C.")
(Signed) ANASTO. CARRILLO.

Sworn to and subscribed before me, this 8th day of Oct., A. D. 1855.
(Signed) C. E. CARR.

Filed Oct. 8th, 1855.
(Signed) C. E. CARR,
Clerk.

"Exhibit B. C. E. C."

Sello Primero. Seis Pesos.

Habilitado provicionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California para los anos de mil ocho cientos treinta y cuatro y ochocientos treinta y cinco.

FIGUEROA,
A. RAMIREZ.

Revalidado pa. el bienio de 1836 y 1837.

GUTIERREZ,
A. RAMIREZ.

Nicolas Gutierrez, teniente Coronel de Caballeria permanente, Comandante-General, Ynspector y Gefe Superior Politico Interino del territorio de la Alta California.

[GOBIERNO POLITICO DE LA ALTA CALIFORNIA.]

Por cuanto el Co. Francisco Perez de Pacheco, Mejicano por nacimiento ha pretendido para su beneficio personal yl de su familia la ampliacion de terreno de estencion de tres leguas al sitio qe. ya posee en propiedad por ser este escaso y no caberte los bienes de su pertenencia en el que obtiene conocido con el nombre de Ausaymas cuya estencion es de dos sitios de ganado mayor segun consta por el titulo de el para qe. se le incluya en el presente, previas las averiguaciones y tramites convenientes he venido en concederle las tres leguas de ampliacion al Norte que solicita, usando de las facultades qe. me son conferidas a nombre de la Nacion Mejicana declarandole la propiedad de el por las presentes letras a reserva de la aprobacion de la Exma Diputacion en cuanto a la ampliacion y bajo las condiciones signientes.

[Dros. 20 ps.]

1a. Que se sometera a las que estableciere al reglamento qe. se ha de formar pa. la distribucion de terrenos baldios y que entre tanto ni el agraciado ni sus heredores podran dividir ni enagenar el que se les adjudica, imponer senso vinculo fianza hipoteca ni otro gravamen aunque sea por causa piadosa ni pasarlo a manos muertas.

2a. Podra cercarlo sin perjudicar las travesias, caminos y servidumbres lo poseera libro y esclusivamente, destinandolo al uso y cultivo qe. mas le acomode pero dentro de un ano a lo mas fabricara casa y estara habitada.

3a. Solicitara del Juez respectivo qe. le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondran a mas de las mojoneras algunos arboles frutates o silvestres de alguna utilidad.

4a. El terreno de que se hace donacion es de ocho sitios de ganado mayor inclusos los Ausaymas "que ya posee en plena propiedad" cuyos linderos son al Norte hasta el pie de la cuesta que posa para Sr. Luis Gonzaga, por el Este la linea recta del terreno que posee, por le Sur este mismo terreno y por el Oeste la paralela de la segunda, segun esplica el diseno que corre en el espediente. El Juez que diere la posecion lo hara medir conforme a ordenanza quedando el sobrante que resulte a la Nacion para los usos convenientes.

5a. Si contraviniere a estas condiciones perdera su derecho at terreno y sera denunciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendose por firme y valedero se tome razon de el en el libro que

corresponde y se entregue al interesado para su resguardo, y demas fines.

Dado en Monterey a primero de Abril de mil ochocientos treinta y seis.

(Signed) NICOLAS GUTIERREZ.
FR'CO DEL CASTILLO NEGRETE,
Srio.

Queda tomada razon a fojas 101 y senalado con el No. 98, del libro que corresponde de asientos de titulos que en el archivo de la Secretaria de mi cargo. Monterey, Abril 1 de 1836.

[Dros. 10 ps.] CASTILLO.

Filed Oct. 8th, 1855.

C. E. CARR,
Clerk.

Order to take Testimony.

In the United States District Court for the Southern District of California.

THE UNITED STATES, Appellants,
v.
FRANCISCO P. PACHECO, Appellee.
} Claim for "San Felipe." No. 78.

And now on this day of , A. D. 1855, the parties appear in Court, the appellant appearing by P. Ord, United States District Attorney for the Southern District of California; and the appellee appearing by J. R. Scott, his attorney, and on motion of appellee's attorney, it is ordered, that either party may take such further testimony as they shall wish in the above-entitled cause.

Filed Oct. 9th, 1855.

C. E. CARR,
Clerk.
By J. W. ROSS,
Dep.

Stipulation.

In the United States District Court in and for the Southern District of California.

THE UNITED STATES, Appellants,
v.
FRANCISCO P. PACHECO, Appellee.
} Case No. 78. Transcript 64.

"San Felipe."

It is hereby stipulated between the parties, that copies certified by the Clerk of the above Court of certain documents appearing in Transcript No. 63, now on file in the office of the Clerk of this Court, in Case No. 79, to wit, a copy of a petition of Francisco Pacheco, with marginal order of Gutierrez, and a copy of a decree of said

Gutierrez, which appear on pages 40, 41, and 42 of said transcript, may be used in evidence in the above cause, No. 78.

J. R. SCOTT,
Attorney for Claimant and Appellee.
P. ORD,
Dist. Attorney U. S.

Filed Oct. 9th, 1855.

C. E. CARR,
Clerk.

Decree.

District Court of the United States for the Southern District of California.

THE UNITED STATES, Appellants,
v.
FRANCISCO P. PACHECO, Appellee. } No. 78.

"San Felipe."

This cause coming on to be heard at a special term of this Court, on an appeal from the final decision of the Commissioners to ascertain and settle private land claims in the State of California, under the Act of Congress, approved March 3d, 1851, upon the transcript of the decision and proceedings, and the papers and evidence on which said decision was founded, and on additional evidence, taken in this Court; and it appearing that said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of the said Commissioners be affirmed, and that the claim of the said Francisco P. Pacheco to the land described in the grant in this case is a good and valid claim, and the same is hereby confirmed to the extent of eight square leagues, including the land called Ausaymas, two square leagues in extent, which has been previously confirmed by this Court to the said appellee herein. Provided, that the said quantity of eight square leagues (including the same tract before granted) be contained within the limits called for in said grant and map to which it refers; but if there be less than said named quantity, then the claim of said appellee to said less quantity is hereby confirmed.

ISAAC S. K. OGIER,
U. S. District Judge for the South. District of California.

Filed Oct. 11th, 1855.
(Signed) C. E. CARR,
Clerk.

Appeal Notice.

In the United States District Court for the Southern District of California.

Special Term, Los Angeles, Sept. 1855.

FRANCISCO P. PACHECO, Appellee, *ads.* THE UNITED STATES, Appellants. } No. 78. Transcript, No. 64.

On motion of P. Ord, Attorney of the United States for the Southern District of California, it is ordered by the Court that an appeal be granted the United States to the Supreme Court of the United States in the above-entitled cause, rendered on or about the 11th day of October, A.D. 1855.

(Signed) P. ORD,
U. S. District Attorney.

Filed October 18th, 1855.

(Signed) C. E. CARR,
Clerk.
By J. W. ROSS,
Dep.

United States District Court, Southern District of California.

Clerk's Office, Los Angeles.

I, Charles E. Carr, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing 21 pages, numbered from 1 to 21, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said Court, of the documentary evidence and of testimony of witnesses upon which the same is founded, on file in this office, in case No. 78 on the docket of the said Court, wherein Francisco Perez Pacheco is appellee, and the United States are appellants for "San Felipe."

[SEAL.] In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Los Angeles, California, this twentieth day of December, A.D. 1855, and of the Independence of the United States of America the eightieth.

C. E. CARR,
Clerk.